Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
IP-Enabled Services	)	WC Docket No. 04-36
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COMMENTS OF ACUTA

The Association for Communications Technology Professionals in Higher Education ("ACUTA") respectfully submits these comments in response to the Federal Communications Commission's ("FCC's" or "Commission's") *Notice of Proposed Rulemaking* in the above-referenced docket.[1] ACUTA is a non-profit association whose members include over 780 colleges and universities throughout the United States, Canada, and other countries. ACUTA members include both large and small non-profit institutions of higher education, ranging from several hundred students to major research and teaching institutions with greater than 25,000 students. ACUTA member representatives have primary responsibility for managing telecommunications services on college and university campuses, including the development and rollout of IP-enabled solutions.

College and university students are consistently early adopters of new technologies – ranging from e-mail to wireless service, instant messaging to Xbox Live – and are as a result one of the least tethered of all societal groups to traditional telephone service. ACUTA member institutions, therefore, witness first-hand the difficulties inherent in integrating new technologies into existing networks and understand fully the impact of new technologies on traditional

[1] *IP-Enabled Services,* Notice of Proposed Rulemaking, FCC 04-28 (rel. Mar. 10, 2004) ("*Notice*").

wireline network operation and usage.

Clear Commission pronouncements on the appropriate regulatory framework for IP-enabled services is essential to provide ACUTA member institutions the proper signals in transitioning effectively from a circuit-switched to an IP-enabled world. At the outset, the Commission must recognize that the transition to IP-enhanced services will occur gradually over a multi-year period. As a result, through this landmark proceeding, the FCC has dual obligations: (1) to clarify the contours of today's regulatory rules for IP-enabled services; and (2) to provide guidance as to the future shape of regulation for IP-enabled services. The recent pulver.com and AT&T access charge decisions were important first steps in clarifying the current rules governing IP-enabled services, but further guidance is necessary because of the individualized nature of those decisions.[2] The FCC correctly notes that this proceeding offers a comprehensive opportunity to "examine what [the Commission's] role should be in this new environment of increased consumer choice … and ask [how] it can best meet its role of safeguarding the public interest." *Notice* at ¶ 2.

ACUTA member institutions share the FCC's enthusiasm for the technological possibilities intrinsic in IP-enhanced solutions, including unique intra- and inter-campus communications functionalities for academic and administrative use, *i.e.*, distance learning, internal campus connections, and improved research and data coordination within and between campuses. The current uncertainty as to whether such campus communications could be regulated by the FCC and/or state public service commissions, however, has a chilling effect on the development of such facilities, especially in times of budget constraints. The Commission

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[2] *Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, Memorandum Opinion and Order, FCC 04-27 (2004) ("*Pulver Order*"); *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, FCC 04-97 (2004).

should declare promptly and clearly that this class of IP-enabled services are unregulated, interstate, information services. At the same time, IP-enabled services that mirror traditional telephone service should not escape vital societal obligations through the integration of IP functionalities into their service.

Categorizing IP-Enabled Services (¶¶ 35-38)

The Commission aptly notes that the initial focus of the proceeding should be "on ways to distinguish services that might be viewed as replacements for traditional voice telephony … from other services (which do not appear to raise these same regulatory questions to the same extent.)" Notice at ¶ 36. The FCC provides a number of distinguishing characteristics that warrant further investigation in differentiating between classes of IP-enabled services. In particular, distinctions between closed networks and those services that involve the public switched telephone network ("PSTN") offer promise. Other proposals worthy of consideration are distinctions based on common carrier status, as well as substitutability/functional equivalence to basic telephone service.

In each of these examples, the campus communications facilities discussed above would fall within the unregulated class of IP-enabled services because they are closed networks, provided by non-common carriers, and are not a substitute of or functional equivalent for basic telephone service. Further, the Commission's findings in the pulver.com decision apply to this wider set of IP-enabled services. Specifically, the FCC found that "declaring [pulver's] FWD to be an unregulated information service subject to Commission jurisdiction will facilitate the further development of FWD and Internet applications like it and these offerings, in turn, will encourage more consumers to demand broadband service." *Pulver Order*, ¶ 19. The

Commission further found that regulating such a service "would risk eliminating an innovative service offering that, as noted by Pulver, promotes consumer choice, technological development and the growth of the Internet, and universal service objectives." *Id.,* ¶ 20

It is essential that these nascent technologies and applications be provided the flexibility to develop; in particular, colleges and universities providing campus-based solutions should be permitted the freedom to foster these educational and developmental opportunities. Accordingly, the FCC should take this opportunity to establish that such IP-enabled services are interstate, information services free of federal and state regulation.

Jurisdictional Considerations (¶¶ 38-42)

The FCC is the proper regulatory authority to evaluate IP-enabled services due to the services' underlying characteristics, which lack geographic boundaries. The need for a clear uniform national policy – in particular with respect to the unregulated services described above – is fundamental to the development and adoption of IP-enabled solutions.

Specific Regulatory Requirements and Benefits (¶¶ 45-71)

As established above, unregulated IP-enabled solutions – like campus connections – should be free of all regulation. For IP-enabled services that are similar to traditional telephone service, a "light touch" approach is appropriate. Importantly, "light touch" is not no regulation; the Commission accurately suggests that it will "apply[] discrete regulatory requirements only where such requirements are necessary to fulfill important policy objectives." *Notice* at ¶ 5.

Despite the apparent rush to formulate new or reduced rules for IP-enabled services, specific "aspects of the existing regulatory framework … should continue to have relevance as

communications migrate to IP-enabled services." *Notice* at ¶ 5. Specifically, the FCC must act to ensure that public safety, disability access, and consumer protection considerations are reflected properly in the new IP environment.

Public safety and E911 access are paramount. College campuses have struggled with the inability of wireless carriers to transmit E911 location information to the proper authorities due to the high number of students and employees that use wireless service as their primary communications link. The advent of IP-enabled services risks replicating these same problems on a potentially larger scale. The FCC should continue working aggressively with the industry and public safety community to develop E911 technical solutions, but should refrain from imposing any access requirements until they are feasible economically and technically. The FCC's efforts to ensure E911 access for multi-line telephone systems, with and without IP-enabled functionalities, must move forward at the same time.[3] While voluntary standard setting should be encouraged, voluntary agreements and best practices cannot, and should not, replace fully enforced regulation. This same basic regulatory approach should also apply for disability access to IP-enabled services and other societal obligations under current law. Once technical limitations are resolved, there is no basis for the class of IP-enabled services that mirror traditional telephone service to avoid these building-block requirements.

Intercarrier Compensation (¶ 61)

The interconnection structure should be reexamined to allow ubiquitous, efficient, and nondiscriminatory access to traditional telephone networks with as few opportunities for arbitrage as possible. The current structure built upon different rate structures based on the types

[3] *See* Reply Comments of ACUTA, CC Docket No. 94-102 (filed Apr. 26, 2004).

of service provided, the jurisdiction of the service, and the specific service provider is unsustainable. All IP-enabled services that connect to the PSTN must compensate carriers for the use of their networks. The method and level of payment appropriate for IP-enabled service access to the PSTN is an open question that should be resolved in the ongoing intercarrier compensation proceeding at the FCC.

Universal Service (¶¶ 63-67)

The FCC will need to determine if the class of IP-enabled services that replace traditional phone service should contribute to the universal service fund. It is clear that unregulated services, like campus communications, need not contribute because those services neither use the PSTN, nor replace traditional phone usage. For other IP-enabled services, the Commission needs to balance dual congressional directives: promoting the deployment and development of Internet-based solutions and ensuring that all American have access to affordable basic telephone service. IP-enabled services offer great promise to provide all customers with additional competitive choices and new services, but the lack of broadband facilities to carry IP-enabled services to rural areas at the present time is problematic.

The FCC should adopt a transitional plan that ensures that the current PSTN is maintained for the present, and that basic telephone rates remain affordable, until a viable alternative exists for all segments of our society, both rural and urban. In doing so, the FCC must also recognize that IP-enabled solutions could provide an efficient and effective replacement to basic telephone service, and that universal service will need to evolve over time to both encourage and reflect the growth in broadband and IP-enabled services.[4] Specifically,

[4] *See* Joint Statement of Commissioners Kathleen Q. Abernathy and Jonathan S. Adelstein,

the Commission will need to evaluate whether broadband service providers should be eligible to receive universal service funds, whether broadband access should be added to the list of supported services, and whether all broadband service providers should be required to contribute to the universal service fund.

Other Considerations (¶¶ 71-79)

The Commission should also take this opportunity to review its current consumer protection requirements, and determine their applicability to IP-enabled services subject to regulation, including CPNI, slamming, truth-in-billing, non-discrimination, and local number portability requirements. Similarly, the rights of end users should be protected with an accessible forum for complaints about carrier or service provider misconduct, whether within or outside of the current FCC complaint procedures. Such a means for redress is fundamental to any regulatory framework.

(Continued . . .)
Federal State Joint Board on Universal Service, Order and Order on Reconsideration, FCC 03-170 (July 14, 2003) ("[U]niversal service is an evolving level of telecommunications services, so it is important that we adopt a framework that permits our universal service programs to reflect advances in the marketplace.").

Conclusion

IP-enabled solutions hold great promise in providing individualized communications solutions. The FCC should provide carriers and end-users with clear notice of the regulatory rules that apply to each class of IP-enabled services. In particular, the class of IP-enabled services that do not involve the PSTN and do not replace traditional telephone service should be declared unregulated interstate information services.

Respectfully submitted,

By: /s/ *Walter Czerniak*

Walter Czerniak
President
The Association for Communications Technology Professionals in Higher Education

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